



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

EXECUTIVE DIVISION

By ECF

September 14, 2023

The Honorable Taryn A. Merkl
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

**RE: Cuomo v. Office of the New York State Attorney General,
Case No. 22-mc-03044**

Dear Judge Merkl:

In response to Your Honor's September 11, 2023 Scheduling Order setting a conference on September 26, 2023 to discuss the issue of the Office of the Attorney General ("OAG") providing certain materials to Movant as well as his pending motion for reconsideration, OAG respectfully writes to: (1) provide an update to the Court on the status of any requests that OAG provide materials to Movant on consent of the relevant witness; and (2) provide the Court with a recent decision from EDNY Magistrate Judge Locke granting OAG's motion to quash a nonparty subpoena in a similar case based on the doctrine of sovereign immunity.

First, subsequent to the Court's July 21, 2023 request that OAG provide Movant with interview transcripts and documents on consent of a witness who was interviewed or provided the documents, OAG has not received any such requests from Movant and has not provided any such materials. Prior to the Court's request, there had been a witness, Ana Liss-Jackson, who indicated to OAG that she consented to OAG providing a copy of her unredacted interview transcript to Movant. In the intervening period, there has been disagreement between that witness and Movant about the confidentiality and public release of her deposition transcript from the *Trooper 1* case. *See, e.g.*, Case No. 22 Civ. 893 (E.D.N.Y.), ECF No. 110-1 at pg. 4 (indicating Ana Liss-Jackson's objection to Movant's treatment of her deposition transcript as well as the public release of unredacted portions of her OAG testimony). After receiving Your Honor's September 11, 2023 Scheduling Order, and in light of Ms. Liss-Jackson's objection, OAG reached out to Ms. Liss-Jackson's counsel to confirm his client still consents to the release by OAG of her unredacted interview transcript to Movant, and her counsel has advised that she declines to provide that confirmation. Accordingly, at this time there are no outstanding requests from Movant for materials from OAG on consent of a witness who testified or provided documents to OAG.

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Second, should the Court contemplate compelling OAG to comply with Movant's subpoena in any respect on reconsideration, OAG respectfully submits that before doing so the Court would need to address and resolve OAG's sovereign immunity defense set forth in opposition to Movant's Motion to Compel and in support of OAG's Motion to Quash, and depending on the Court's ruling, also possibly OAG's privilege claims. *See* ECF Nos. 18 at pgs. 10-14, 22-3; 23 at pgs. 1-5, 7-10; and 25 at pgs. 71-90, 112. On this point, OAG wishes to bring to the Court's attention a September 12, 2023 Memorandum and Order issued by Magistrate Steven I. Locke granting OAG's motion to quash a nonparty subpoena based on the doctrine of sovereign immunity in *Guerlyne Felix as Administratrix of the Estate of Matthew Felix v. County of Nassau, et al.*, No. 21 Civ. 676 (E.D.N.Y.) (JMA) (SIL), ECF No. 63, a wrongful death action in which the plaintiff, like Movant here, sought OAG's investigative materials beyond what was already published on OAG's website. A copy of this Memorandum and Order is attached to this letter.

Respectfully,

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cc: Counsel of Record (via ECF)